IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 3001 of 2006(G)

PETITIONER:

KERALA PRIVATE SELF FINANCING
ENGINEERING COLLEGE MANAGEMENTS ASSOCIATION,
REPRESENTED BY ITS SECRETARY,
MANAGEMENT HOUSE, KALAMASSERY.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)

RESPONDENTS:
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1. THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PRIYADARSINI HILLS, KOTTAYAM.

2. THE REGISTRAR,
M.G.UNIVERSITY,
PRIYADARSINI HILLS, KOTTAYAM.

3. THE STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, GOVENMENT SECRETARIAT,
TRIVANDRUM.

BY ADV. SRI. T.A. SHAJI, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, ALONG WITH WPC NO. 414 OF 2004 THE COURT ON 10/08/2007 DELIVERED THE FOLLOWING:

WPC 3001 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - Copy of list of colleges coming under the M.G University
Ext.P2 - Copy of G.O dated 3.10.194 of the Academic A1 Section of the M.G University
Ext.P3 - Copy of order UO No Ac A1/2/2242/2001 dated 2007-2002 of do.
Ext.P4 - Copy of order dated 26.11.2002 of M.G University
Ext.P5 - Copy of order dated 12.12.2002 of do.
Ext.P6 - Copy of order dated 5.1.2004
Ext.P7 - Copy of interim order dated 3.3.2004 in WP(C) 414/2004 of this court.
Ext.P8 - Copy of judgment dated 3.8.2005 in W.A No 1581/05 of this court.

Respondent's exhibits:

Ext.R1(a) - Copy of judgment in WA 1581/2005 of this court

Annexure I - True copy of resolution of the Syndicate
Annexure R1(b) True copy of statement prepared by the University
Annexure R1(c) - True copy of statement prepared by the University

[true copy]

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ

W.P.(C). Nos. 3001 of 2006 and 414/2004

Dated this the 10th day of August, 2007

JUDGMENT

Radhakrishnan, J.

The question referred to us for consideration is whether the university can charge Annual Affiliation cum Administration Fee every year and also insist for renewal of affiliation on a year to year basis on the Self Financing colleges excluding the Government colleges and aided colleges and also whether there is any nexus between the Administration fee collected with the value of services rendered by the university.

2. Sri. Kurian George Kannanthanam, Senior Counsel appearing for the petitioners submitted that University is not justified in granting only provisional annual affiliation. Counsel submitted that once the self financing colleges satisfy the condition laid down in the University Act and statute, the University is bound to give permanent affiliation. Counsel refered to Section 23(1) of

the M.G. University Act which states that Syndicate can affiliate institutions in accordance with the terms and conditions of such affiliation prescribed in the Act and the Statutes. Therefore, once the terms and conditions are satisfied, the University is bound to give permanent affiliation. Counsel sought for a direction to the University to confirm the affiliation of the petitioner's colleges without insisting on payment of any yearly affiliation fee. Counsel also submitted that university was not justified in demanding exorbitant amount towards Administration Fee. Counsel submitted one of the petitioner's engineering colleges has an average intake of 1200 students for the entire four years. University is demanding Rs. 500/- per student per year that means the College will have to pay an amount of Rupees Six Lakhs towards Administration Fee every year. Counsel submitted demand of such exorbitant amount has no nexus with the services rendered by the University.

3. Senior counsel also submitted that as far as a Self Financing College is concerned, the service rendered by the University is confined to the conduct of examinations and valuation of answer papers only. Counsel further submitted that there is no justification to exclude the Government colleges and Aided colleges, even though the major chunk of work is undertaken by University is with regard to the aided colleges and Government colleges. Counsel submitted that the services rendered by the University to Self Financing colleges is negligible compared to that of Government and Aided Colleges which are excluded completely from the payment of Administration fee. University has to monitor the appointments, approval, promotion etc of teaching and non-teaching staff of aided as well as the Government colleges. Such responsibility is absent in the case of Self Financing Colleges. Learned counsel submitted that the University is collecting exorbitant amounts from the self-financing colleges so as to render free service to the Government Colleges as well as Aided

Colleges which according to the Counsel, is arbitrary and illegal.

4. Sri.T.A. Shaji, learned counsel appearing for the University referred to Statutes 6 (2) of Chapter 23 of the M.G.University Statute, 1997, and submitted that the Syndicate shall have the power to affiliate any college within the territorial jurisdiction of the University and also for preparing students for degree, titles or diplomas of the University which satisfies conditions prescribed in the laws of the University. Counsel also referred to statute 12 of the Act and stated that University has got the discretion to grant provisional as well as permanent affiliation. Counsel submitted that the University granted only provisional affiliation to the Self Financing colleges, and that too, on an yearly basis. Counsel submitted that the University is not demanding separate fee for renewal or extension of affiliation. Counsel also submitted that permanent affiliation is normally granted only to those institutions, which come under Aided stream, under Arts and Science Colleges

and not to Professional Colleges, which have regulatory bodies such as AICTE/IMC/INC/NCTE etc., and cited the example that University has not granted permanent affiliation even to Government Medical College, Kottayam and also to the Government Dental College, Kottayam.

5. Learned Standing Counsel appearing for the University also referred Section 5(xi) of the University Act and submitted that the University has the power to fix the fees payable to the University and to demand and receive such fees. Counsel submitted that the Annual Administration Fee is the only fee collected from the students of the Self Financing unaided Colleges, though no such fee is levied from the students of Aided Colleges or Government colleges. Annual administration fee is the fee payable to the University for the services rendered by the University in connection with admission of students, conduct of examination and supervision with respect to the conduct of the College, course of study and the classes. Counsel submitted that no such

amount is being collected from the aided and Government colleges, since both the Aided and Government Colleges function due to Government grant. Further Government also provides grant to the University for its functioning. Since there is no financial assistance from the Government so far as Unaided colleges are concerned, University has to find out their own funds to meet the expenses incurred for providing services. That is the reason why, University levies Annual Administration Fee from the Self Financing Colleges. Counsel submitted that university has to maintain University employees so as to supervise the work of the unaided Engineering Colleges. Salary and allowance for these staffs is very high and services are pensionable. Counsel for the University has referred to the counter affidavit and stated that the University is not demanding any annual affiliation fee.

6. We will first examine claim for permanent affiliation. Statute 12 of Chapter 23 of the M.G.University Act and Statutes, 1997 says that the

affiliation granted may be provisional. But it may be noted that once the conditions are satisfied it would be open to the University to give permanent affiliation. But since, no affiliation fee is demanded for the renewal of affiliation, the petitioners are not adversely affected. Further we notice some of the Government colleges like medical college, Kottayam, Dental College, Kottayam etc., are still having only provisional affiliation. We therefore find no reason to issue a writ of mandamus directing the University to make the affiliation granted to the Self-Financing Colleges, permanent.

7. Question now to be considered is whether the demand of Annual Administration fee has any nexus with the services rendered by the University. Earlier, vide University Order dated 6.9.2001 Annual Administration fee at the rate of 10% was collected from the students. Later it was revised and accordingly self Financing Colleges had to pay an annual fee of rupees Two Lakhs Fifty thousand. Now University is demanding an amount of Rs.500/- per student per year as annual administration

fee. Complaint is that excess fee is being collected from the self financing colleges so as to cater to the needs of aided colleges and Government colleges, while totally exempting them from payment of Administration fee. No details have been furnished before this Court as to whether there is any co-relation between the Administration Fee demanded and service rendered, by the University. Further no details are available with regard to quantum of amount received from the Government so as to exempt aided and Government colleges. Facts would clearly show that voluminous work has to be undertaken so far as the aided and Government colleges are concerned as compared to the Self Financing colleges.

8. Petitioners' prayer that they are also to be completely exempted, from the payment of Administration fee as such cannot be accepted. All the same we feel that the matter requires a second look at the hands of the Syndicate of the University.

9. It is trite law, that the concept of fee is based on the principle of equivalence. There must at least, be a broad relationship between the amount of fee generated and the services rendered by the University. The University has to discharge the burden that demand of administration fee is to reimburse/recompense qualifiable/measurable benefit provided with the services rendered. At least there must be some broad co-relationship. In this connection reference may be made to the following rulings.

Jindal Stainless Ltd (2) and Another v. State of Haryana and Others (2006 (7) SCC 241), Sreenivasa General Traders and Others v. State of Andra Pradesh and Others (1983 (4) SCC 353), State Corporation of Calicut v. Thachambalath Sadasivan and Others (1985 (2) SCC 112), State of HP and Others v. Shivalik Agropoly Products and Others (2004 (8) SCC 556), Thressiamma L. Chirayil v. State of Kerala (2007 (1) KLT 303)

10. Under the above mentioned circumstances we are inclined to give a direction to the University to reconsider the demand of Administration Fee from the petitioners, afresh in the light of the principles discussed in this judgment, University will hear the petitioner and pass appropriate orders within a period of three months from the date of receipt of a copy of this judgment. Interim orders passed by this Court will continue till fresh order is passed by the University. The University may also consider the request of the petitioners for permanent affiliation.

K.S.RADHAKRISHNAN
Judge

ANTONY DOMINIC
Judge

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